## UNITED STATES DISTRICT COURT

## EASTERN DISTRICT OF TEXAS

JARVIS DEMOND HEMPHILL, Plaintiff,

CIVIL ACTION NO. 1:19-CV-1 versus

UNITED STATES OF AMERICA, et al.,

Defendants.

## MEMORANDUM ORDER PARTIALLY ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Jarvis Demond Hemphill, an inmate formerly confined at the Federal Correctional Complex in Beaumont, Texas, proceeding pro se, brought this lawsuit pursuant to the Federal Tort Claims Act.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed for failing to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties. However, plaintiff filed a motion to dismiss the action. Pursuant to Fed. R. Civ. P. 41(a), plaintiff is entitled to dismiss the action without prejudice because the defendants have not filed an answer or motion for summary judgment. Therefore, the dismissal should be without prejudice.

## ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED** to the extent the report recommends dismissal. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

SIGNED at Beaumont, Texas, this 4th day of March, 2019.

Marcia A. Crone.

MARCIA A. CRONE

UNITED STATES DISTRICT JUDGE